

CAT - One Pager Report

Last Update: 05/02/2017

Municipal Separate Storm Sewer System (MS4) Permitting - David Webster (OEP)

HOT

BACKGROUND: Stormwater is the leading cause of water quality problems in Massachusetts and New Hampshire with waters impaired due to contaminated runoff. Tackling this problem is critical to cleaning up rivers, lakes, and ponds, and delivering clean water. There are five existing or planned MS4 permits in Massachusetts and New Hampshire: Boston, Worcester, Massachusetts Department of Transportation, and two general permits that cover remaining communities in Massachusetts and New Hampshire that require stormwater permits.

STATUS OF WORK: A final MA MS4 General Permit was issued in April 2016. A final NH Small MS4 General Permit was issued in January 2017. EPA is working on draft permits for MassDOT and Boston and a final or re-draft for Worcester. The MA MS4 GP has been challenged by the Center for Regulatory Reasonableness and four other parties. The case has been consolidated in the DC Circuit Court and is awaiting briefing schedules from the court. Two petitions for review of the NH Small MS4 general permit have been filed so far by the Conservation Law Foundation (in the First Circuit Court of Appeals) and CRR (in the D.C. Circuit; on March 24, 2017, CLF moved to intervene in the CRR's D.C. Circuit petition). Parties have until June 1, 2017 to file an appeal. EPA has moved to transfer CLF's petition in the First Circuit to the D.C. and consolidate it with CRR's petition. CLF has objected to the transfer and argues that all petitions filed on the NH small MS4 GP must be heard in the First Circuit. On March 29, 2017, EPA filed a motion in the D.C. Circuit to hold the matter in abeyance for 90 days, that is, until June 29, 2017. A 90-day stay of proceedings would allow time for any additional petitions for review of the EPA action at issue in this case to be filed before any further proceedings take place. On March 30, 2017, the court granted this motion. The deadline for dispositive motions and the certified index to the administrative record is July 16, 2017.

On March 30, 2017, the D.C. Circuit established a briefing schedule for the MA MS4 appeal. However, on April 19, 2017, CRR filed a motion to hold the briefing schedule in abeyance for 90 days. On April 21, 2017, the DC Court granted the motion. The briefing schedule ordered on March 30, 2017 which had petitioner's briefs due May 8, 2017, EPA brief due July 24, 2017 and final briefs due September 28, 2017 has been suspended. Parties must file any motions to the court by July 20, 2017 regarding governing of future proceedings. OGC, ORC, and DOJ continue to discuss at which point to offer to explore ADR through DC Circuit's mediation program.

SENSITIVE ISSUES: There is often keen municipal, state, non-government organization (NGO), and congressional interest in MA and NH municipal permits. In a March 9, 2017, letter to Administrator Pruitt, NH Governor Sununu raised concerns about the cost to municipalities of complying with the small MS4 permit and invited the Administrator to come to NH to meet with local and state leaders who would be impacted by the permit. In a January 25, 2017, letter to Administrator Pruitt, CRR raised concerns about the permit's cost to municipalities in both NH and MA as well as the science supporting the permits and requested the new administration review these MS4 permits.

In MA and NH, currently EPA Region 1 has the sole responsibility of issuing, justifying, and defending limits in a litigious atmosphere that is charged with public, financial, and environmental interests. Issues include whether the permit is adequately protective, affordable, and/or defensible under the law. The Region is currently considering whether to seek an assessment of the viability of alternative dispute resolution (ADR) to assist in the resolution of

these two cases.

PARTNERS: MA, NH

Date	Milestone	Status
06/30/2017	Issue Draft MassDOT MS4 permit.	Planned
07/17/2017	Submission of certified index of the record for the NH small MS4 General Permit to court	Planned
07/20/2017	Deadline for parties in the MA MS4 appeal to file motions for governing	Planned
09/29/2017	Issue Draft Boston MS4 permit.	Planned